

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 14, 2020

*Document Control Center 04/14/20@9.49 AM*COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00074

Ex Parte: In the matter of Adopting
Revisions to the Rules Governing
Credit for Reinsurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy of this order may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to the rules set forth in Chapter 300 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Credit for Reinsurance, 14 VAC 5-300-10 *et seq.* ("Rules"), which revise the Rules at 14 VAC 5-300-40, 14 VAC 5-300-90, 14 VAC 5-300-95, and 14 VAC 5-300-150; and adds a new Rule at 14 VAC 5-300-97.

The proposed revisions to Chapter 300 are necessary to implement the provisions of § 38.2-1316.2 of the Code which was amended during the 2020 General Assembly (Chapter 208 of the 2020 Acts of Assembly) eliminating the reinsurance collateral requirements for Assuming

Insurers (Reciprocal Reinsurers) that have their head office or are domiciled in a Reciprocal Jurisdiction and that meet certain solvency requirements. The proposed revisions include the following:

- Conforming changes to citations in 14 VAC 5-300-40, 14 VAC 5-300-90 and 14 VAC 5-300-150;
- Addition of the definition of "solvent scheme of arrangement" to 14 VAC 5-300-40;
- Revision of the requirements in 14 VAC 5-300-95 concerning audited financial statements of certified reinsurers, and the addition of a requirement to provide an English translation of certain information; and
- The addition of 14 VAC 5-300-97, which implements the provisions of § 38.2-1316.2 E concerning credit for reinsurance ceded to assuming insurers.

NOW THE COMMISSION is of the opinion that the proposed revisions submitted by the Bureau to revise the Rules at 14 VAC 5-300-40, 14 VAC 5-300-90, 14 VAC 5-300-95, and 14 VAC 5-300-150; and to add a new Rule at 14 VAC 5-300-97, should be considered for adoption with a proposed effective date of July 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to revise the Rules at 14 VAC 5-300-40, 14 VAC 5-300-90, 14 VAC 5-300-95, and 14 VAC 5-300-150; and to add a new Rule at 14 VAC 5-300-97 is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the revisions to the Rules, shall file such comments or hearing request on or before June 1, 2020, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to

Case No. INS-2020-00074. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website:

<http://www.scc.virginia.gov/case>. All comments shall reference Case No. INS-2020-00074.

(3) If no written request for a hearing on the proposal to revise the Rules, as outlined in this Order, is received on or before June 1, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to revise the Rules to all insurers, burial societies, fraternal benefit societies, health services plans, risk retention groups, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the Commission, to qualified reinsurers in Virginia, and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to revise the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed revisions to the Rules on the Commission's website:

<http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY of this order shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel at MBrowder@oag.state.va.us, 202 N. 9th Street, 8th Floor,

Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE**CH 0300 Rules Governing Credit for Reinsurance****14VAC5-300-40. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"The Act" means the provisions concerning reinsurance set forth in Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

"Beneficiary" means the entity for whose sole benefit the trust described in 14VAC5-300-120, or the letter of credit described in 14VAC5-300-130, has been established and any successor of the beneficiary by operation of law, including, without limitation, any receiver, conservator, rehabilitator or liquidator.

"Certified reinsurer" has the meaning set forth in § 38.2-1316.1 of the Code of Virginia.

"Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. However, when such a trust is established in conjunction with a reinsurance agreement that qualifies for credit under 14VAC5-300-120, the grantor shall not be an assuming insurer for which credit can be taken under § 38.2-1316.2 of the Code of Virginia.

"Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

1. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

- a. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 USCA § 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
 - b. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 USCA §§ 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 USCA § 1703; or
2. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of items 1 a and b of this definition.

"NAIC" means the National Association of Insurance Commissioners.

"Obligations", as used in 14VAC5-300-120 A 11, means:

1. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
2. Reserves for reinsured losses reported and outstanding;
3. Reserves for reinsured losses incurred but not reported; and
4. Reserves for allocated reinsured loss expenses and unearned premiums.

"Promissory note" means, when used in connection with a manufactured home, a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

"Qualified United States financial institutions" has the meanings set forth in § 38.2-1316.1 of the Code of Virginia.

"Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

14VAC5-300-90. Credit for reinsurance; reinsurers maintaining trust funds.

A. Pursuant to § 38.2-1316.2 C 4 of the Act, the commission shall allow credit for reinsurance ceded to a trustee assuming insurer which, as of the date of the ceding insurer's statutory financial statement:

1. Maintains a trust fund and trustee surplus that complies with the provisions of § 38.2-1316.2 C 4;
2. Complies with the requirements set forth in subsections B, C, and D of this section; and
3. Reports annually to the commission on or before June 1 of each year in which a ceding insurer seeks reserve credit under the Act substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commission to determine the sufficiency of the trust fund. The accounting shall, among other things, set forth the balance to the trust and list the trust's investments as of the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million, except as provided in subdivision 2 of this subsection.

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3. a. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(1) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

- (2) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
- (3) In addition to these trusts, the group shall maintain a trusteed surplus of which \$100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.
- b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commission:
- (1) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
- (2) If a certification is unavailable, a financial statement prepared by independent public accountants of each underwriter member of the group.
4. a. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10 billion (calculated and reported in substantially the same manner as prescribed by the NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

(1) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(2) Maintain a joint trusteed surplus of which \$100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(3) File a properly executed Certificate of Assuming Insurer as evidence of the submission to this Commonwealth's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

b. Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commission an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. 1. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

- b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest;
 - c. The trust and the assuming insurer shall be subject to examination as determined by the commission;
 - d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
 - e. No later than February 28 of each year the trustees of the trust (i) shall report to the commission in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end and (ii) shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next December 31.
2. a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
- b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of

the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers, excluding liabilities that are otherwise secured by acceptable means, and shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

b. Reserves for losses reported and outstanding;

c. Reserves for losses incurred but not reported;

d. Reserves for allocated loss expenses; and

e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:

- a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
- b. Aggregate reserves for accident and health policies;
- c. Deposit funds and other liabilities without life or disability contingencies; and
- d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to § 38.2-1316.2 of the Act and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in § 38.2-1316.1 of the Act, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in § 38.2-1316.1, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5.0% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subdivisions 1 e, 3, 5 b, or 6 of this subsection, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of § 38.2-1316.2 shall be invested only as follows:

- 1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by:
 - a. The United States or by any agency or instrumentality of the United States;
 - b. A state of the United States;
 - c. A territory, possession, or other governmental unit of the United States;

- d. An agency or instrumentality of a governmental unit referred to in subdivisions 1 b and c of this subsection if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or
 - e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:
- a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this Commonwealth and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

- c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;
3. Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
4. An investment made pursuant to the provisions of subdivision 1, 2, or 3 of this subsection shall be subject to the following additional limitations:
 - a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5.0% of the assets of the trust;
 - b. An investment in any one mortgage-related security shall not exceed 5.0% of the assets of the trust;
 - c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and
 - d. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subdivisions 2 a and 2 c of this subsection, but shall not exceed 2.0% of the assets of the trust;
5. Equity interests.
 - a. Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC §§ 78 a to 78 kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subdivision an amount exceeding 1.0% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1.0% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subdivision, when added to the aggregate cost of other investments in equity interests then held pursuant to this subdivision, shall not exceed 10% of the assets in the trust;

6. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

7. Investment companies.

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 USC § 80 a, are permissible investments if the investment company:

(1) Invests at least 90% of its assets in the types of securities that qualify as an investment under subdivision 1, 2, or 3 of this subsection or invests in securities that are determined by the commission to be substantively similar to the types of securities set forth in subdivision 1, 2, or 3 of this subsection; or

(2) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subdivision 5 a of this subsection;

b. Investments made by a trust in investment companies under this subdivision shall not exceed the following limitations:

(1) An investment in an investment company qualifying under subdivision 7 a (1) of this subsection shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and

(2) Investments in an investment company qualifying under subdivision 7 a (2) of this subsection shall not exceed 5.0% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subdivision 5 a of this subsection.

8. Letters of credit.

a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commission) to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to ~~14VAC5-300-100~~ 14VAC5-300-110 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

14VAC5-300-95. Credit for reinsurance; certified reinsurers.

A. Pursuant to § 38.2-1316.2 D of the Act, the commission shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this Commonwealth at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commission. The security shall be in a form consistent with the provisions of § 38.2-1316.2 D and ~~14VAC5-300-110~~, 14VAC5-300-120, 14VAC5-300-130, or 14VAC5-300-140. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

f. Line 9: Inland marine

g. Line 12: Earthquake

h. Line 21: Auto physical damage

5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended by mutual agreement of the parties to the reinsurance contract after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification procedure.

1. The commission shall post notice on the Bureau of Insurance's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commission may not take final action on the application until at least 30 days after posting the notice required by this subdivision.

2. The commission shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection A of this section. The commission shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

a. The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commission pursuant to subsection C of this section.

b. The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than \$250 million calculated in accordance with subdivision 4 h of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250 million and a central fund containing a balance of at least \$250 million.

c. The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commission. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commission in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(1) Standard & Poor's;

(2) Moody's Investors Service;

(3) Fitch Ratings;

(4) A.M. Best Company; or

(5) Any other nationally recognized statistical rating organization.

- d. The certified reinsurer shall comply with any other requirements reasonably imposed by the commission.
4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

- a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commission shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

- c. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- d. For certified reinsurers not domiciled in the United States, a review annually of the Assumed Reinsurance Form CR-F (for property/casualty reinsurers) or the Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Form CR-S (for life and health reinsurers) of this chapter;
- e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- f. Regulatory actions against the certified reinsurer;
- g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 4 h of this subsection;
- h. For certified reinsurers not domiciled in the United States, audited financial statements ~~(audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis)~~, regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commission will consider audited financial statements for the last ~~three~~ two years filed with its non-United States jurisdiction supervisor;

- i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commission shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - k. Any other information deemed relevant by the commission.
5. Based on the analysis conducted under subdivision 4 e of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commission may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commission shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subdivision 4 a of this subsection if the commission finds that:
- a. More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed \$100,000 for each cedent; or
 - b. The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds \$50 million.
6. The assuming insurer shall submit a properly executed Certificate of Certified Reinsurer as evidence of its submission to the jurisdiction of this Commonwealth, appointment of the commission as an agent for service of process in this Commonwealth, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commission shall not certify any assuming insurer that is domiciled in a

jurisdiction that the commission has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commission, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that are not otherwise public information subject to disclosure shall be exempted from disclosure under §§ 38.2-221.3 and 38.2-1306.1 of the ~~Act~~ Code of Virginia and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

- a. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
- b. Annually, Form CR-F or CR-S, as applicable;
- c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 7 d of this subsection;
- d. Annually, the most recent audited financial statements (~~audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis~~), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's supervisor;
- e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

- f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
 - g. Any other information that the commission may reasonably require.
8. Change in rating or revocation of certification.
- a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commission shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subdivision 4 a of this subsection.
 - b. The commission shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commission to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
 - c. If the rating of a certified reinsurer is upgraded by the commission, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commission shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commission, the commission shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
 - d. Upon revocation of the certification of a certified reinsurer by the commission, the assuming insurer shall be required to post security in accordance with 14VAC5-300-

110 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 14VAC5-300-90, the commission may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commission to be at high risk of uncollectibility.

C. Qualified jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commission determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commission shall publish notice and evidence of such recognition in an appropriate manner. The commission may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commission shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commission shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commission as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with

the commission with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commission, include but are not limited to the following:

- a. The framework under which the assuming insurer is regulated.
- b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
- c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
- d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
- e. The domiciliary regulator's willingness to cooperate with United States regulators in general and the commission in particular.
- f. The history of performance by assuming insurers in the domiciliary jurisdiction.
- g. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commission has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
- h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
- i. Any other matters deemed relevant by the commission.

3. A list of qualified jurisdictions shall be published through the NAIC committee process. The commission shall consider this list in determining qualified jurisdictions. If the commission approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commission shall provide thoroughly documented justification with respect to the criteria provided under subdivisions 2 a through i of this subsection.

4. United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of certification issued by an NAIC accredited jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commission has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Certificate of Certified Reinsurer and such additional information as the commission requires. The assuming insurer shall be considered to be a certified reinsurer in this Commonwealth.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this Commonwealth as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commission of any change in its status or rating within 10 days after receiving notice of the change.

3. The commission may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subdivision B 8 a of this section.

4. The commission may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commission suspends or revokes the certified reinsurer's certification in accordance with subdivision B 8 b of this

section, the certified reinsurer's certification shall remain in good standing in this Commonwealth for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this Commonwealth.

E. Mandatory funding clause. In addition to the clauses required under 14VAC5-300-150, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commission shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

14VAC5-300-97. Credit for reinsurance; reciprocal jurisdictions.

A. Pursuant to §38.2-1316.2 E of the Act, the commission shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this chapter.

B. A "reciprocal jurisdiction" is a jurisdiction, as designated by the commission pursuant to subsection D of this section, that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under

specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this Commonwealth or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the commission pursuant to §38.2-1316.2 D and 14VAC5-300-95 C, which is not otherwise described in subdivisions 1 or 2 of this subsection and which the commission determines meets all of the following additional requirements:

a. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

b. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

c. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this Commonwealth or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commission or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

d. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commission in accordance with a memorandum of understanding or similar document between the commission and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this Commonwealth to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subdivision C 7 of this subsection according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than \$250 million; or

b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(1) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250 million; and

(2) A central fund containing a balance of the equivalent of at least \$250 million.

3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

- a. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subdivision B 1 of this section, the ratio specified in the applicable covered agreement;
- b. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subdivision B 2 of this section, a risk-based capital (RBC) ratio of 300% of the authorized control level, calculated in accordance with the formula developed by the NAIC; or
- c. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subdivision B 3 of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commission determines to be an effective measure of solvency.
4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction Form RJ-1 of this chapter, of its agreement to the following:
- a. The assuming insurer must agree to provide prompt written notice and explanation to the commission if it falls below the minimum requirements set forth in subdivisions 2 or 3 of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.
- b. The assuming insurer must consent in writing to the jurisdiction of the courts of this Commonwealth and to the appointment of the commission as agent for service of process.
- (1) The commission may also require that such consent be provided and included in each reinsurance agreement under the commission's jurisdiction.
- (2) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

d. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this Commonwealth's ceding insurers, and agrees to notify the ceding insurer and the commission and to provide 100% security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of §38.2-1316.2 D and §38.2-1316.4 2 and 14VAC5-300-120, 14VAC5-300-130 or 14VAC5-300-140.

f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subdivision 5 of this subsection.

5. The assuming insurer or its legal successor must provide, if requested by the commission, on behalf of itself and any legal predecessors, the following documentation to the commission:

a. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

b. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

c. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

d. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subdivision 6 of this subsection.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

a. More than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commission;

b. More than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50 million, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the commission on an annual basis that the assuming insurer complies with the requirements set forth in subdivisions 2 and 3 of this subsection.

8. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

D. The commissioner shall timely create and publish a list of reciprocal jurisdictions.

1. A list of reciprocal jurisdictions is published through the NAIC Committee Process. The commission's list shall include any reciprocal jurisdiction as defined under subdivisions B 1 and B 2 of this section, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commission may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

2. The commission may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process, except that the commission shall not remove from the list a reciprocal jurisdiction as defined under subdivisions B 1 and B 2 of this section. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Article 3.1 (§38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia or this chapter.

E. The commission shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

1. If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection C of this section have been met, the commission has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions

shall be granted credit in accordance with this subsection. The commission may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection C of this section.

2. When requesting that the commission defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commission may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the commission determines that an assuming insurer no longer meets one or more of the requirements under this section, the commission may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with 14VAC5-300-110.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commission and consistent with the provisions of 14VAC5-300-110.

G. Before denying statement credit or imposing a requirement to post security with respect to subsection F of this section or adopting any similar requirement that will have substantially the same regulatory impact as security, the commission shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection C of this section;

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set out in subdivision 2 of this subsection, if the commission determines that no or insufficient action was taken by the assuming insurer, the commission may impose any of the requirements as set out in this subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

H. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

14VAC5-300-150. Reinsurance contract.

A. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of 14VAC5-300-60, 14VAC5-300-70, 14VAC5-300-80, 14VAC5-300-90, 14VAC5-300-95, 14VAC5-300-97, or ~~14VAC5-300-100~~ 14VAC5-300-110 or otherwise in compliance with § 38.2-1316.2 of the Act unless the reinsurance agreement:

1. Includes a proper insolvency clause that stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company;
2. Includes a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decisions of such court or panel; and
3. Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

B. If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this Commonwealth, the credit permitted pursuant to § 38.2-1316.2 C 3, C 4, and § H shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and
- b. To designate the commission or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

2. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

C. If the assuming insurer does not meet the requirements of § 38.2-1316.2 C 1, 2, or 3, the credit permitted by § 38.2-1316.2 C 4 or D shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by § 38.2-1316.2 C 4, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

2. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

3. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

FORMS (14VAC5-300)

[Certificate of Assuming Insurer - Year Ended December 31, 2017, R05 \(05/18\) \(eff. 5/2018\)](#)

[Certificate of Certified Reinsurer - Year Ended December 31, _____, R15 \(02/14\) \(eff. 2/2014\)](#)

[Schedule S, Part 1 - Part 7, 1994-2017 National Association of Insurance Commissioners, Annual Statement Blank, Life, Accident & Health \(eff. 1/2018\)](#)

[Schedule F, Part 1 - Part 9, 1994-2017 National Association of Insurance Commissioners, Annual Statement Blank, Property/Casualty \(eff. 1/2018\)](#)

[Form CR-F - Part 1 - Part 2, 2011 National Association of Insurance Commissioners \(eff. 1/2013\)](#)

[Form CR-S - Part 1 - Part 3, 2011 National Association of Insurance Commissioners \(eff. 1/2013\)](#)

[Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction - Year Ended December 31, _____, RJ-1 \(07/20\) \(eff. 7/2020\)](#)

[Certificate of Certified Reinsurer - Year Ended December 31, _____, R15 \(11/19\) \(eff. 11/2019\)](#)